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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,365	04/09/2004	Yeok Sing Sio	KL0433US (#90232)	1208
28672	7590	01/15/2008	EXAMINER	
D. PETER HOCHBERG CO. L.P.A.			ESTREMSKY, GARY WAYNE	
1940 EAST 6TH STREET			ART UNIT	PAPER NUMBER
CLEVELAND, OH 44114			3673	
			MAIL DATE	DELIVERY MODE
			01/15/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/821,365

Applicant(s)

SIO, YEOK SING

Examiner

Gary Estremsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9, 16 and 18-20 is/are allowed.
- 6) ☒ Claim(s) 10-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 3,050,322 to Miller.

Miller '322 teaches Applicant's claim limitations including : "first and second catch members" - 9,17, "each comprising a shaft" - the narrow portion leading up to hooked engaging end, "base" - the portion immediately adjacent to the 'shaft' that is generally perpendicular to the respective shaft. As regards the functionally-recited 'prying' limitation, it is the examiner's position that the claimed invention does not include a prying instrument such as a screwdriver, and the recitation is not intended as, and should not be interpreted as a *step* in a *process of using* where the claimed invention is a *product*. See MPEP 2173.05(p) section II as regards *product* and *process of using* in the same claim. The limitation is interpreted as a capability, but it's noted that it does not further define any particular structure. It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. In this case, it's noted that a prying tool such as a

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screwdriver inserted in the space between 4a and 9 in Fig 3 for example will cause the narrow space between said first and second members to increase and for the flexible projections to flex towards each other,... .

Much like the disclosed invention, the prior art catch members include portions forming an "L" shape, those portions being integral with other portions not comprising portion of "the "L" shape". The prior art catch members each include parallel (as shown in Fig 3) shaft portions with a projection on the end. Each catch member's parallel shaft portion is integrally joined with a generally perpendicular portion at its base. And like the disclosed invention, that portion is integrally joined with additional other structure not comprising part of the "L" shape. It is examiner's position that prior art has inherent capability to be "flexible in response to the insertion of a prying member". Either member is inherently made of material having some range of flexibility wherein the claim does not specify a degree or range of flexibility that can be relied upon to patentably distinguish from structure of the prior art.

One of ordinary skill in the art would recognize the inherent capability to have at least some flexibility as claimed to be inherent to the prior art due to its geometry and material(s) where the claimed invention has not defined a range of flexibility or structure dimensions that might be relied upon to define structure that can be relied upon to patentably distinguish. As an aside, its' noted that the presently-disclosed invention is illustrated to comprise similar geometry as the prior art and is claimed to be comprised of material explicitly disclosed by the reference.

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Spring 18 reads on functional recitation very broadly defining the "lock member" where its structure is not defined.

As regards claim 1, without suggestion to the contrary, the reference doesn't teach or make obvious each shaft moveable at least 25 degrees from a rest position during *flexing*.

3. Claims 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 3,971,580 to Tantlinger.

Tantlinger '580 teaches Applicant's claim limitations including : "first and second catch members" - 17,30, "each comprising a shaft" - the narrow portion leading up to hooked engaging end, "base" - the portion immediately adjacent to the 'shaft' that is generally perpendicular to the respective shaft. As regards the functionally-recited 'prying' limitation, it has been interpreted as a capability, but it's noted that it does not further define any particular structure. In this case, it's noted that a prying tool such as a screwdriver inserted in the space between 10,15 in Fig 1 for example will cause the narrow space between said first and second members to increase and for the flexible projections to flex towards each other with increased bearing stress.

Much like the disclosed invention, the prior art catch members include portions forming an "L" shape, those portions being integral with other portions not comprising portion of "the "L" shape". The prior art catch members each include parallel (as shown in Fig 3) shaft portions with a projection on the end. Each catch member's parallel shaft portion is integrally joined with a generally perpendicular portion at its base. And like

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the disclosed invention, that portion is integrally joined with additional other structure not comprising part of the "L" shape. It is examiner's position that prior art has inherent capability to be "flexible in response to the insertion of a prying member". Either member is inherently made of material having some range of flexibility wherein the claim does not specify a degree or range of flexibility that can be relied upon to patentably distinguish from structure of the prior art.

One of ordinary skill in the art would recognize capability to have at least some flexibility as claimed to be inherent to the prior art due to its geometry and material(s) where the claimed invention has not defined a range of flexibility or structure dimensions that might be relied upon to define structure that can be relied upon to patentably distinguish.

As regards claim 13, part 35 reads on functional recitation defining the "lock member" where its structure is not defined.

4. Claims 10-15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 6,446,824 to Sluiter

Sluiter '824 teaches Applicant's claim limitations including : "first and second catch members" – 32,35, "each comprising a shaft" - the narrow portion leading up to hooked engaging end, "base" - the portion immediately adjacent to the 'shaft' that is generally perpendicular to the respective shaft. As regards the functionally-recited 'prying' limitation, it has been interpreted as a capability, but it's noted that it does not further define any particular structure. In this case, it's noted that a prying tool such as

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a screwdriver inserted in the space between 31,35 in Fig on the face of the Patent for example will cause the narrow space between said first and second members to increase and for the flexible projections to flex towards each other with increased bearing stress.

Much like the disclosed invention, the prior art catch members include portions forming an "L" shape, those portions being integral with other portions not comprising portion of "the "L" shape". The prior art catch members each include parallel (as shown in Fig 3) shaft portions with a projection on the end. Each catch member's parallel shaft portion is integrally joined with a generally perpendicular portion at its base. And like the disclosed invention, that portion is integrally joined with additional other structure not comprising part of the "L" shape. It is examiner's position that prior art has inherent capability to be "flexible in response to the insertion of a prying member". Either member is inherently made of material having some range of flexibility wherein the claim does not specify a degree or range of flexibility that can be relied upon to patentably distinguish from structure of the prior art.

As regards claim 13 and 15, the portions of 28 that grasp 26 read on broad limitation of "lock member" where no structure of that member is defined in the claim that might be relied upon to patentably distinguish from the noted structure of the prior art where it's noted that pushing the noted portions of 28 towards 25/27 moves the arrangement into the assembled/"locked position".

Allowable Subject Matter

5. Claims 1-9, 16, and 18-20 are allowed.

Response to Arguments

6. Applicant's arguments have been fully considered but they are not persuasive. Arguments that prior art doesn't teach "L" shape are not entirely persuasive inasmuch as, like the prior art, the disclosed invention includes integral portions in addition to portions comprising the "L" portion. Argument that portion of the device of Tantlinger '580 includes a curve are not entirely persuasive inasmuch as a portion of the curved portion (as shown on the face of the Patnet) nearest reference numeral 30 and tangent to a perpendicular from the shaft portion (which bears projection at 31) forms other portion of an "L" shape. Arguments regarding intended use are not entirely persuasive wherein structure of the prior art is inherently capable of use reading on claim recitations relating to same.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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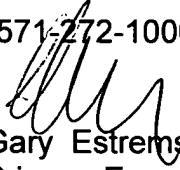
TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 571 272-7055. The examiner can normally be reached on T,W,Th,F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on 571 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gary Estremsky
Primary Examiner
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